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44 PAGES—LAST EDITION.

SATURDAY, OCTOBER 3, 1903. SALT LAKE CITY, UTAH.

FIFTY-THIRD YEAR.

Desperate Battle Being Waged To Save Mortensen's Life

TRUTH AND LIBERTY

ARGUES AGAINST PRISONER'S DOOM.

Plea for Peter's Life in Presence of Greatest Crowd Ever Seen in a Utah Court Room.

AN EXTRAORDINARY SCENE.

Barnard Stewart Tells Why He Couldn't Get Affidavit and Inveighs Against the Prosecution.

PRISONER HAS NOT YET SPOKEN.

Curious Throgs So Heavy That Court Room is Locked to Keep Them Out—Overrun the Building.

Never before during the trial of Peter Mortensen was there such a crowd of spectators present as was crowded into Judge Morse's courtroom this morning to hear the arguments upon the motion for a new trial in that famous homicide case. Before 9 o'clock people commenced to pour into the courtroom and by 9:30 o'clock every seat in the room was filled. Still the spectators crowded in and by the time court convened there was not standing room inside the room and the doors were closed and hundreds were turned away by the bailiffs who guarded the doors. At least 400 people were crowded into the room and were compelled to remain there during the entire session as no one was permitted to leave the room while the arguments were on. There is no telling how many people were in the corridor outside the courtroom clamoring for admittance, but the confusion which they created caused the court to order the bailiffs to clear the halls entirely.

MORTENSEN APPEARS.
Peter Mortensen, accompanied by Acting Warden Wright and Guard Andrews, entered the courtroom at 9:30 o'clock. He took a seat before his attorneys and engaged in conversation with them until Attorney B. J. Stewart arrived about 10 o'clock. Mortensen then conversed with Mr. Stewart until court convened.

TEN JURORS PRESENT.
District Attorney Eichnor entered the courtroom a few minutes before 10 o'clock. He was followed by C. B. Stewart, another of defendant's attorneys. Just before court convened, ten of the twelve jurors who convicted Mortensen filed into the courtroom and took seats in the jury box. A number of them occupying the identical seats which they occupied while the trial was in progress. When they filed in, they were greeted warmly and with no doubt recalled the day when the same men returned into court with a verdict which sealed his doom. The jurors present this morning were: Henry Tribe, S. E. Roy, J. M. Day, R. A. Shaw, J. H. Smith, Samuel Bingham, Joseph Smith, W. A. Biles, J. F. Alexander, C. H. Ingram, Jr., and J. B. Dalley. Juror A. H. Rock, who made the affidavit upon which the defense rested, was not present. It was learned that he is now out of the county and hence could not be subpoenaed in time to appear today. The twelfth juror, Michael Kopp, is now dead.

TALKED ALL MORNING.
Atty. B. J. Stewart consumed the entire session this morning in his argument, which was presented in a forcible and eloquent manner. Mortensen seemed to take his usual interest in the proceedings. Atty. B. J. Stewart, in the conclusion of the argument he was handcuffed by his guards and taken out of the room as quickly as possible. The court decided that he was not to be heard again until he had given his speech and before then he was to be taken out of the room. A large number of the spectators remained in the courtroom during the noon recess so as to be sure of a good seat at the afternoon session.

ASCENDS THE BENCH.
At two minutes past 10 o'clock Judge Morse ascended the bench and court convened. The case of the state vs. Peter Mortensen was called immediately, but before the trial commenced, he was permitted to begin his argument. The court found it necessary to instruct the jury to lock the doors and not allow any one to enter or leave the room in order to keep the case secret. Before Mr. Stewart had proceeded very far with his argument the confusion in the courtroom was so great that the court ordered the bailiffs to instruct the people to move away from the doors outside and cease clamoring for admittance to the courtroom.

MOTION FOR NEW TRIAL.
Mr. Stewart first read the motion for a new trial, which has appeared in the "News" heretofore, and he then read the affidavit of Juror A. H. Rock, which set out the alleged misconduct of the jurors when they visited the scene of the murder and his attorneys accompanying them. The motion was supported by stippling off distances and in the conversation had with Royal B. Young, the sworn officer of the court, who conducted them to the premises, in the affidavit, Mr. Stewart then read the affidavit which was filed yesterday in regard to the failure to secure the conduct of the jurors at the scene of the murder. After reading the affidavit in full, Mr. Stewart stated that he asked that he be sworn at this time to testify.

MR. YOUNG SWORN.
Mr. Young came forward and was sworn in. After he was asked his name by Mr. Stewart, Dist. Atty. Eichnor

objected to the introduction of Mr. Young's testimony for the reason that the supreme court has ruled that the defense is not entitled to introduce oral testimony in support of a motion for a new trial.

"I don't believe the court desires to hear any oral testimony on this matter," said Judge Morse. "The court gave the attorneys an opportunity to introduce such evidence on the former hearing on the motion for a new trial but no action was taken by them and as the proper showing was not made for the introduction of the oral evidence, the court refused at that time to allow Mr. Young to testify. The matter was taken to the supreme court and passed upon and I don't believe that you should be allowed to go into it again."

TO BE HEARD AGAIN.

Mr. Stewart asked permission to be heard further on the matter before the court passed upon it finally. His request was granted and he proceeded to again read his affidavit which was filed yesterday in full, laid much emphasis upon the conduct of Mr. Young in pointing out to the jury different spots closely connected with the crime, such as the place where Hay was supposed to have fallen, where his body was thrown over the fence and where the jars of money were supposed to have been placed on the wall of the cellar in Peter Mortensen's house.

JURY PREJUDICE.

"Who knows," continued Mr. Stewart, "but that what you said weighed heavy upon the hearts of those jurors and prejudiced them against the defendant. We have a right to believe that every word he uttered was prejudicial to the defendant. Mr. Young refused to make an affidavit as to the conduct of the jurors when they visited the scene of the crime, because he said, he believed defendant to be guilty. We are satisfied that there are other conversations which occurred at that time which were prejudicial to the rights of the defendant and which should be made known by the examination of Mr. Young on the witness stand in that connection."

CRITICIZED EICHNOR.

Mr. Stewart took occasion to criticize the action of Dist. Atty. Eichnor in suggesting to the court, on the former hearing on the motion for a new trial, that Mr. Young should make an affidavit as to the conduct of the jurors when they visited the scene of the crime. He said that he did not have to make it. This is what the defense has had to contend with in this matter, the prejudicial action of the district attorney, for the sworn officer of the court, and who should protect the rights of defendant, Peter Mortensen as well as prosecute the interests of the state. Whether Peter Mortensen is innocent or guilty, I believe that the acts of the jurors at the scene of the crime were prejudicial to his rights and I believe it is the duty of every one of them to come forward and tell what occurred there and if I am wrong in my affidavit to expose me."

ABOUT COMPLETION.

Mr. Stewart then read a number of authorities which held that it was within the discretion of the court to compel jurors to make affidavit as to the conduct of the jurors when they were charged or when it is shown that there is even reason to believe that there was misconduct on their part. He also cited authorities wherein certain misconduct of the jurors was held to be a reversible error and grounds for a new trial. "The court instructed Royal B. Young, when he was sworn to take the jury to the premises," said Mr. Stewart, "not to allow anyone to talk to the jurors or to talk to them himself about the case, but merely to show them over the premises. Yet the records of this trial show that he talked to them and around Salt Lake. Prominent among them is Gen. George Wilkes, whom everybody here recognizes as Maj. Wilkes, a well known mining and civil engineer, and son of Commodore Wilkes, who captured Mexico and Sillid. He served with Gen. Longstreet and was also with Lee and Joe Johnston."

GEN. T. F. STEFFY IS ANOTHER.

He was a student in the Virginia Military Institute at Lexington, Va., at the outbreak of the war and witnessed the hanging of John Brown. Johnathan C. Royle is another, who was advocate general under Gen. Price. Judge W. C. Hall also served with distinction. Capt. Thomas W. Kerrigan is another, and Judge Henry Miller, B. Clark, J. D. Lewis, Samuel H. Lewis, Col. J. C. Ellis and S. B. Riggs, whose father was mayor of Waco, Tex., are among the others who have been mentioned.

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L. D. DEAL, THE RAILROAD CONTRACTOR, RETURNED FROM LUMBERTON, N. C., ON ACCOUNT OF ILLNESS. IT IS THOUGHT THAT WITH PROPER ATTENTION HE WILL BE ABLE TO GET AGAIN IN A FEW DAYS.

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Rock Springs Coal Miners Settle Their Grievances with Knives.

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VETERANS OF "THE LOST CAUSE"

Visit of General Alford Brings Out the Fact That Salt Lake Has Several of Them.

TELL SOME GOOD STORIES.

General Alford Was Here in the Fifties When He Met Pres. Young—Had the Gold Fever.

General George F. Alford of Dallas, Texas, who is in Salt Lake for the purpose of organizing a camp of United Confederate Veterans, was met in the office of Gen. T. P. Steffy in the Keith building this morning by a representative of the "News." This is not Gen. Alford's first visit to this city, inasmuch as he came here first on July 19, 1850, on his way to the California gold excitement, where he spent six years.

During his first visit here he remained two weeks and met and talked with Brigham Young, with whose strong personality he was at that early day much impressed.

He has just come from Seattle, where he attended the Trans-Mississippi congress to which he was a delegate and where he made a speech which was received with general favor. While there he met Senator Reed Smoot and Apostle John Taylor, and was a delegate to the Virginia Military Institute.

Gen. Alford served all through the war and was with Gen. Magruder, Kirby Smith and other noted Confederate generals west of the Mississippi. He escaped the Yankee bullets though and told a good story about himself in this connection. After the war he was visiting Jeff. Davis at Beauvoir, Miss., where he met Senator Proctor of Vermont and other gentlemen who were visiting Mr. Davis. During the conversation, Mr. Davis slipped Gen. Alford on the leg and said: "General, do you know the reason why I promoted you so frequently, beginning with captain and ending with general?"

"Well," said Mr. Davis, "I noticed that you had a peculiar faculty, amounting almost to genius for some how avoiding those Yankee bullets, and I thought an officer who could do that might save his command from them and that's the reason."

J. Van Meter, also a veteran and who has resided so long in Salt Lake that his friends say he is a "Mormon" Bishop, is frequently taken for one, was present and told a good story about the late Henry Ward Beecher, to whom he and to whose wife he was in England they all agreed was largely due to the fact that the British government did not recognize the confederacy. While addressing a large audience in Kansas, which was very unsympathetic, some one called out:

"Why didn't you lick the rebels in 60 days as you said you would?" "Well, we would have done so if they had been British soldiers."

It is estimated that there are possibly 100 ex-confederates living in and around Salt Lake. Prominent among them is Gen. George Wilkes, whom everybody here recognizes as Maj. Wilkes, a well known mining and civil engineer, and son of Commodore Wilkes, who captured Mexico and Sillid. He served with Gen. Longstreet and was also with Lee and Joe Johnston."

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